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Counsel for the Liquidating Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

<b>IN RE:</b>	)	<b>Chapter 11</b>
<b>XYIENCE INCORPORATED,</b>	)	
<b>a Nevada corporation,</b>	)	<b>No. BK-S-08-10474-MKN</b>
<b>Debtor.</b>	)	
<hr/>	)	
<b>DAVID R. HERZOG,</b>	)	
<b>as Liquidating Trustee,</b>	)	
<b>Plaintiff,</b>	)	<b>Adversary Case No.</b>
<b>v.</b>	)	
<b>MTV NETWORKS, a division of</b>	)	
<b>VIACOM, INC.,</b>	)	
<b>Defendant.</b>	)	

**COMPLAINT**

Plaintiff David R. Herzog, as Liquidating Trustee (the "Trustee") for the estate of Xyience, Incorporated (the "Debtor"), the former debtor and debtor in possession the above-captioned Chapter 11 case (the "Case"), complains against defendant MTV NETWORKS, a division of VIACOM, INC., as follows:

**BACKGROUND**

1  
2           1.     On January 18, 2008 (the “Petition Date”), the Debtor filed in this  
3 Court (the “Court”) its voluntary petition for relief under Chapter 11 of the Bankruptcy  
4 Code, 11 U.S.C. § 101 et. seq. (the “Bankruptcy Code” or the “Code”).

5           2.     Pursuant to an Order entered January 31, 2008 (the “Avoidance  
6 Date Order”) the Court dismissed, with prejudice, an involuntary petition for relief under  
7 chapter 11 of the Bankruptcy Code filed against the Debtor on January 3, 2008, as Case  
8 No. BK-S-08-10049-MKN.

9           3.     The Avoidance Date Order provides that, in this Case, the period for  
10 avoidance actions under the applicable provisions of the Bankruptcy Code will be  
11 measured as if the petition date in this Case were January 3, 2008 (the “Extended  
12 Avoidance Date”).

13           4.     From January 18, 2008 through the October 23, 2008, entry of the  
14 Plan Confirmation Order (as hereinafter defined), the Debtor operated and managed its  
15 business affairs as a debtor in possession pursuant to Sections 1107 and 1108 of the  
16 Bankruptcy Code.

17           5.     On May 19, 2008, the Debtor filed its Plan of Reorganization  
18 (“Plan”), which provided, among other things, that substantially all of the Debtor’s  
19 remaining assets, including all of its pre-petition claims, rights and causes of action, and  
20 all of its right and powers to pursue avoidance actions under Chapter 5 of the Bankruptcy  
21 Code, would be transferred to and would vest in a Liquidating Trust for the benefit of  
22 various creditor classes.

23           6.     The Plan further provided that, upon the Effective Date of the Plan,  
24 a Liquidating Trustee would represent the Trust Estate.

25           7.     On October 23, 2008, the Court entered an Order (the “Plan  
26 Confirmation Order”) approving the Debtor’s Disclosure Statement in connection with  
27 the Plan and confirming the Plan.  
28

1           8.     On November 12, 2009, the Court entered an Order authorizing the  
2 Trustee to accept the appointment as Liquidating Trustee, and the Trustee accepted his  
3 appointment on that day.

4           9.     On November 20, 2009, the Trustee caused notice of his  
5 appointment to be filed and served, and on November 23, 2009, the Plan became  
6 effective.

7  
8                               **JURISDICTION**

9           10.    The Court possesses subject matter jurisdiction over this Adversary  
10 Proceeding pursuant to 28 U.S.C. § 1334(b).

11           11.    This Adversary Proceeding is a core proceeding under 28 U.S.C.  
12 § 157(b)(2)(F).

13           12.    Venue of this Adversary Proceeding lies in this judicial district  
14 under 28 U.S.C. 1409(a) because the Bankruptcy Case is pending here and the amount of  
15 the alleged transfers at issue exceeds \$10,950.

16                               **COUNT I: PREFERENCES**

17           13.    The Trustee realleges and incorporates by reference each of the  
18 foregoing allegations of this Complaint as if fully restated here.

19           14.    Prior the Petition Date, the Debtor was indebted to defendant.

20           15.    Within the 90 days prior to the Petition Date, defendant received  
21 the following payments, among others, from the Debtor, or from property of the Debtor  
22 (collectively, the "Preference Payments"):

23                   (a)     \$100,000 on November 7, 2007.

24           16.    Each of the Preference Payments was made to defendant for or on  
25 account of an antecedent debt owed by the Debtor to defendant before the payment was  
26 made.

27           17.    Each of the Preference Payments was made while the Debtor was  
28 insolvent.

